

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 89-140

CITIES OF SAN JOSE AND SANTA CLARA
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
SAN JOSE, SANTA CLARA COUNTY

AMENDING ORDER NO. 89-013, REQUIRING THE CITIES OF SAN JOSE AND SANTA CLARA TO CEASE AND DESIST DISCHARGING WASTE CONTRARY TO DISCHARGE PROHIBITIONS IN ORDER NO. 89-012 (NPDES PERMIT)

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. On January 18, 1989, the Board adopted Order No. 89-012, reissuing waste discharge requirements for the Cities of San Jose and Santa Clara (hereinafter the discharger), for the San Jose/Santa Clara Water Pollution Control Plant. This NPDES permit prohibits discharges south of the Dumbarton Bridge, discharges to dead-end sloughs, and discharges receiving less than 10:1 minimum initial dilution.
2. On January 18, 1989, the Board adopted Cease and Desist Order No. 89-013, requiring the discharger to cease and desist discharging waste contrary to Order No. 89-012 (Prohibitions A.1, A.2, A.3). Discharge from the facility has resulted in loss and degradation of endangered species habitat. The CDO set a time schedule for achieving full compliance with Order No. 89-012. The CDO required the discharger to submit, by September 1, 1989, a proposal for either (i) mitigation for loss of endangered species habitat, or (ii), compliance with the three prohibitions. Mitigation is necessary in order for the Board to approve an exception to the three prohibitions.
3. The discharger has complied with interim deadlines of Order No. 89-013. In particular, the discharger submitted necessary aerial infrared photos of marsh conversion by the March 18 deadline. At the request of the U.S. Fish and Wildlife Service (USFWS), the discharger submitted additional aerial photos in early May. The discharger and USFWS submitted additional information on marsh conversion by July 15, about two months after the May 18 deadline. This delay allowed USFWS more time to review all aerial photos and allowed the discharger and USFWS to discuss photo interpretation. The delay has improved the quality of the estimates of saltmarsh acreage lost or degraded by the discharge.
4. The Board will use the July 15 information to review and perhaps revise the 240 acre mitigation figure. The Board will not consider this matter until its October meeting. The discharger needs at least 30 days to adjust its mitigation proposal based on the Board's acreage decision. December 1, 1989, is the earliest date by which the discharger could be expected to compute a mitigation proposal.
5. This action is an order to enforce waste discharge requirements previously adopted by the Board. It is therefore categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency CEQA Guidelines.

6. The discharger and interested persons have been notified of the Board's intent to take this enforcement action, and have been provided with an opportunity to submit written comments and appear at the public meeting.

7. At a public hearing on August 16, 1989, the Board heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED THAT:

A. Order No. 89-013, a Cease and Desist Order issued to the Cities of San Jose and Santa Clara, shall be amended as shown below.

B. Provision D shall be revised to change the date of full compliance from September 1, 1989, to December 1, 1989.

I, Steven R. Ritchie, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on August 16, 1989.

A handwritten signature in black ink, appearing to read "Steven R. Ritchie", is positioned above the printed name.

STEVEN R. RITCHIE,
Executive Officer